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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1973

No. 73-1032

BEN J. SLUTSKY and JULIUS SLUTSKY,
d/b/a "The Nevele",

Petitioners,

vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR RE-HEARING

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The petitioners hereby respectfully move this Court for an order vacating its denial of the petition for a writ of certiorari entered on April 14, 1974, granting the petition, and directing the review of the judgment and opinion. The reasons for this motion are that after the filing of our petition, this Court heard argument in a collection of civil tax cases which test the government's taxing powers. *Alexander* v. *"Americans United", Inc.*, 72-1371, argued January 7, 1974; *Bob Jones University* v. *Connally*, 72-1470, argued January 7, 1974; *Commissioner* v. *Idaho Power Co.*, 73-263, argued February 27, 1974; and *Kahn* v. *Shevin*, 73-78, argued February 25, 1974. Although each of these cases involve civil tax issues, the abuse of the

government's revenue powers was reviewed by this Court. The powers given the government by the Second Circuit in this case concerning the prosecution of a federal tax case present a far greater threat to every citizen than those excercised in these civil cases. For here the prosecution was allowed to convict two elderly men of tax evasion using solely the bank deposit method for reconstructing income. The dialogue of the civil cases bears directly on the underlying issues presented in this case. Thus, the identity of these basic legal issues amply justifies a reconsideration of the denial of certiorari here.

In *Lefkowitz* v. *Turley*, U.S. , 94 S. Ct. 316,* the Court re-emphasized the importance of the fifth amendment in criminal investigations. There the Court stressed that the privilege against self-incrimination protects the individual from being forced to give evidence against himself and, thus, implicitly refortified the presumption of innocence. Our central claim is that the presumption of innocence encased in the fifth amendment and firmly locked into the privilege against self-incrimination, was irreparably damaged by the Second Circuit's ruling in this case. Here the government failed to investigate most of petitioners' bank deposits. The sampling taken by the prosecution was most misleading. Thus, an intolerable burden was cast on the taxpayers to come forward and prove that tens of thousands of checks were not income. This deplorable shifting of the burden of proof creates a much greater threat to the vitality of the fifth amendment than that posed in Lefkowitz.

*Published in the West Publishing Co. advance sheets, January 1, 1972.

Conclusion

For the reasons set forth above, as well as those contained in the petition for a writ of certiorari, petitioners pray that this Court grant a re-hearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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Certificate of Counsel

As counsel for petitioner, I hereby certify that this petition for re-hearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

HERALD PRICE FAHRINGER